

**190.070 Prohibited practices on the part of a manufacturer, distributor, factory branch, or factory representative.**

- (1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth:
  - (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliances, equipment, or any other product not required by law, which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this section is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.
  - (b) To order or accept delivery of any new motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle, as publicly advertised by the manufacturer or distributor.
  - (c) To order for any person any parts, accessories, equipment, machinery tools, appliance, or any commodity whatsoever not required in connection with a recall campaign.
  - (d) To participate monetarily in an advertising campaign or contest, any promotional materials, training materials, showroom or other display decorations, or materials, at the expense of the dealer, without the consent of the dealer.
  - (e) To enter into any agreement with the manufacturer, distributor, factory branch, or factory representative, or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, distributor, factory branch, or factory representative. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer's franchise, or contractual agreement shall not constitute a violation of this law.
  - (f) To change the capital structure of the dealership, or the means by or through which the dealer finances the operation of the dealership, provided that the dealership at all times meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
  - (g) To refrain from participation in the management or investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this section does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facility requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealership.

- (h) To change location of the dealership, or to, during the course of the agreement, make any substantial alterations to the dealership premises, when to do so, would be unreasonable in light of the current economic, political, and social considerations.
  - (i) To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, or to the commissioner, if the referral would be binding upon the dealer.
  - (j) To establish or maintain exclusive facilities, personnel, display space, or signage for a new motor vehicle make or line.
  - (k) To expand facilities without making available a sufficient supply of new motor vehicles to support the expansion in light of the market and economic conditions.
- (2) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative:
- (a) To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, but in any case no more than sixty (60) days, after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts, or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within sixty (60) days, without cause. This section is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.
  - (b) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market areas.
  - (c) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall not be a transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.
  - (d) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the

transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.

- (e) To increase prices of motor vehicles which the dealer had ordered for private retail customers prior to the dealer's receipt of the written official price increase notification, a sales contract signed by a private retail consumer shall constitute evidence of each order, provided that the vehicle is in fact delivered to the customer. In the event of manufacturer price reductions, the amount of a reduction received by a dealer shall be passed on to the private retail consumer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by the following shall not be subject to the provisions of this section:
  - 1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;
  - 2. Revaluation of the United States dollar, in the case of foreign-make vehicles or components; or
  - 3. Increased transportation charges due to an increase in the rate charged by common carrier or transporter.
- (f) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof, without making the same offer, upon written request, to all other dealers in the same line make within the relevant market area.
- (g) To release to any outside party, except under subpoena, any administrative, judicial or arbitration proceedings, or any business, financial, or personal information which may be, from time to time, provided by the dealer to the manufacturer, without the express written consent of the dealer.
- (h) To deny any dealer the right of free association with any other dealer for any lawful purpose.
- (i) To establish or maintain a relationship, on the part of a manufacturer, distributor, factory branch, or factory representative, where the voting rights exceed a simple majority.
- (j) To own, operate, or control any motor vehicle dealership in the Commonwealth; however, this subsection shall not prohibit:
  - 1. The operation by any manufacturer of a dealership for a temporary period, not to exceed one (1) year, during the transition from one (1) owner to another;

2. The ownership or control of a dealership by a manufacturer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or
  3. The ownership, operation, or control of a dealership by a manufacturer if the licensor determines after a hearing at the request of any party, that there is not a dealer who is independent of the manufacturer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.
- (k) To compete without good faith with a new motor vehicle dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, distributor, factory branch, or factory representative in the relevant market area. A manufacturer, distributor, factory branch, or factory representative shall not, however, be deemed to be competing when operating a dealership, either temporarily for a reasonable period, not to exceed one (1) year, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment, subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.
  - (l) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new motor vehicle dealers to make warranty adjustment with retail customers.
  - (m) To fail to give consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state; provided that consent may be withheld when in light of other circumstances, granting the consent would be unreasonable.
  - (n) To fail to be licensed as provided in this chapter, and to maintain a bond in an amount as determined by this chapter.
- (3) It shall be unlawful for a manufacturer, either directly or indirectly, or in combination with or through any subsidiary or affiliated entity, to discriminate in favor of one (1) dealer against another dealer holding a franchise for the same line make of motor vehicle by furnishing to only one (1) dealer any of the following:
    - (a) Any vehicle, part, or other product that is not available to each dealer at the same price, including discounts, rebates, incentives, or other payments or allowances affecting the net price of the product;
    - (b) Any vehicle, part, or other product that is not made available to each dealer in quantities proportionate to the demand for the vehicle, part, or other product;
    - (c) Any vehicle, part, or other product that is not made available to each dealer on comparable delivery terms, including time of delivery after placement of an order;
    - (d) Any promotional or advertising payment or allowance that is not made available to each dealer on proportionally equal terms;

- (e) Any opportunity to purchase or lease from the manufacturer the dealer's facility that is not made available to each dealer on terms proportionate to the respective values of its facilities;
  - (f) Any personnel training that is not made available to each dealer on proportionally equal terms;
  - (g) Any inventory or other financing that is not made available to each dealer on proportionally equal terms, except that a manufacturer, subsidiary, or affiliated entity shall not be obligated to make available financing to a dealer who does not meet reasonable credit standards uniformly applied by the manufacturer, subsidiary, or affiliated entity;
  - (h) Any opportunity to perform work for which the dealer is entitled to be compensated under this chapter that is not made available to each dealer under uniformly applied standards;
  - (i) Any opportunity to sell products or services distributed by the manufacturer for resale in connection with the line make of the motor vehicle covered by the franchise that is not made available to each dealer on proportionally equal terms;
  - (j) Any opportunity to establish an additional sales, service, or parts outlet that is not made available to each dealer in whose relevant market area the sales, service, or parts outlet will be located;
  - (k) Any information concerning the manufacturer's products, prices or other terms of sale, or promotional programs that is not contemporaneously furnished to the dealer;
  - (l) Any improvement to, or payment to the dealer for an improvement to, the dealer's facilities that is not made available to each dealer on proportionally equal terms;
  - (m) Any opportunity to sell or assign retail installment contracts or consumer leases to the manufacturer or the manufacturer's sales finance company subsidiary that is not made available to each dealer on proportionally equal terms, except that a manufacturer or sales finance company shall not be obligated to purchase any retail installment contract or consumer lease that does not meet reasonable credit terms uniformly applied by the manufacturer or sales finance company subsidiary;
  - (n) Any product assistance, service, or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms; or
  - (o) Any payment for any service or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms.
- (4) It shall not be a defense to an alleged violation of subsection (3) of this section, that an item or opportunity was offered to a dealer if the offer was conditioned upon the dealer meeting one (1) or more requirements that are not reasonable and necessary to fulfill the dealer's obligations under the franchise. The manufacturer shall have the burden of proving that any requirement upon which an offer was conditioned was reasonable and necessary to fulfill the dealer's obligations under the franchise

when the offer was made. A requirement shall not be found to be reasonable and necessary to fulfill the dealer's obligations under the franchise if the manufacturer cannot prove that it was within the control of each dealer to meet the requirement imposed on the dealer as a condition of the offer.

- (5) A dealer who alleges a good faith belief that the dealer has been, or is being, discriminated against in violation of subsection (3) of this section, may demand in writing that the manufacturer furnish the dealer with pertinent information reasonably necessary for the dealer to determine if discrimination exists. If the manufacturer fails to furnish the dealer with the information demanded within thirty (30) days of the manufacturer's receipt of the dealer's written demand, the manufacturer shall have, in any subsequent legal proceeding, the burden of proving that the alleged violation has not occurred.
- (6) Any dealer who is discriminated against by a manufacturer in violation of subsection (3) of this section shall recover three (3) times an amount equal to the value of what the dealer would have received if the manufacturer had complied with subsection (3) of this section upon furnishing any item or opportunity to another dealer.

**Effective:** February 22, 2000

**History:** Amended 2000 Ky. Acts ch. 23, sec. 6, effective February 22, 2000. -- Amended 1982 Ky. Acts ch. 373, sec. 13, effective July 15, 1982. -- Created 1956 Ky. Acts ch. 161, sec. 7, effective May 18, 1956.